cuit Court, from which no writ of error is taken, and rendered in the Federal court after it has sustained its own jurisdiction and refused to remand the action?

In view of the fact that the question is a Federal one, and that the state court is given no right to review or control the exercise of the jurisdiction of the Federal court, we think that such Federal judgment cannot be ignored in the state court as one absolutely void for want of jurisdiction, and that such judgment, until reversed by a proper proceeding in this court, is binding upon the parties, and must be given force when set up in the action. This view is sustained in the former decisions of this court upon the subject. In *Des Moines Navigation Company* v. *Iowa Homestead Company*, 123 U. S. 552, this court considered the effect of a judgment rendered in the Federal court upon removal from the state court. In that case it appeared that the Federal court ought not in fact to have taken jurisdiction, for it appeared upon the face of the record that some of the defendants who did not join in the petition for removal were citizens of the same State as the plaintiff. The state court of Iowa refused to give effect to the judgment of the Federal court, and its judgment was reversed. Mr. Chief Justice Waite, speaking for the court, said (123 U. S. 559):

"Whether in such a case the suit could be removed was a question for the Circuit Court to decide when it was called on to take jurisdiction. If it kept the case when it ought to have been remanded, or if it proceeded to adjudicate on matters in dispute between two citizens of Iowa, when it ought to have confined itself to those between the citizens of Iowa and the citizens of New York, its final decree in the suit could have been reversed, on appeal, as erroneous, but the decree would not have been a nullity. To determine whether the suit was removable in whole or in part or not, was certainly within the power of the Circuit Court. The decision of that question was the exercise and the rightful exercise of jurisdiction, no matter whether in favor of or against taking the cause. Whether its

decision was right, in this or any other respect, was to be finally determined by this court on appeal."

In *Dowell* v. *Applegate*, 152 U. S. 327, the benefit of a judgment in the Circuit Court of the United States was claimed. That judgment was the basis of a conveyance to the plaintiff in error, and it was contended that the conveyance was void, inasmuch as the Federal court had no jurisdiction of the suit in which the sale was ordered. It was held in this court that even if the Federal court erred in assuming or retaining jurisdiction of the suit, its decree being unmodified and unreversed, could not be treated as a nullity. After citing previous decisions of this court, the court, speaking through Mr. Justice Harlan, said (152 U. S. 340):

"These cases establish the doctrine that, although the presumption in every stage of a cause in a Circuit Court of the United States is that the court is without jurisdiction unless the contrary affirmatively appears from the record, *Börs* v. *Preston*, 111 U. S. 252, 255, and the authorities there cited, yet, if such jurisdiction does not so appear, the judgment or final decree cannot, for that reason, be collaterally attacked, or treated as a nullity.

"These authorities, above cited, it is said, do not meet the present case, because the ground on which, it is claimed, the Federal court assumed jurisdiction was insufficient in law to make this case one arising under the laws of the United States. But that was a question which the Circuit Court of the United States was competent to determine in the first instance. Its determination of it was the exercise of jurisdiction. Even if that court erred in entertaining jurisdiction, its determination of that matter was conclusive upon the parties before it, and could not be questioned by them, or either of them, collaterally, or otherwise than on writ of error or appeal to this court."

Applying these principles to the case at bar, we think the state court erred in refusing to give effect to the judgment set up in the answer offered in the state court. When the application for removal was made in the state Circuit Court that court

held the case removable, and the record was filed in the Federal court. Afterwards that court, upon the application of the plaintiff, refused to remand the suit, and proceeded to a final determination thereof, and rendered judgment accordingly.

It is not necessary to determine whether the case was removable or not. The Federal court was given jurisdiction to determine that question, it did determine it, and its judgment was conclusive upon the parties before it, until reversed by a proper proceeding in this court. Instead of bringing the case here the plaintiff proceeded in the state court, and that court denied effect to the Federal judgment. The plaintiff in error lost no right when thus compelled to remain in the state court, notwithstanding the Federal judgment in his favor, and brought the suit here by writ of error to the final judgment of the state court, denying his right secured by the Federal judgment. It was open to the plaintiff to bring the adverse decision of the Federal court on the question of jurisdiction to this court for review. This course was not pursued, but the action proceeded in the state court evidently upon the theory that the judgment of the Federal court was a nullity if it had erred in taking jurisdiction. For the reasons stated we think this hypothesis is not maintainable.

The judgment of the Court of Appeals of Kentucky is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

Dissenting: MR. JUSTICE MCKENNA.